

IN THE UNITED STATES DISTRICT COURT  
FOR THE WESTERN DISTRICT OF PENNSYLVANIA

ANDRE JACOBS,	)	
	)	
Plaintiff,	)	
	)	
v.	)	Civil Action No. 04-1592
	)	
SCOTT CARLSON, et al.,	)	
	)	
Defendants.	)	

MEMORANDUM ORDER

CONTI, District Judge.

Pending before the court is defendants' motion for leave to file a motion for summary judgment (Doc. No. 172.) For the reasons set forth below, the court will deny defendants' motion.

On April 5, 2005, Magistrate Judge Robert C. Mitchell entered an order in this case requiring that all dispositive motions, i.e. a motion for summary judgment, shall be filed on or before the date on which the movant's pre-trial narrative statement is due. (Doc. No. 31.) Defendants' pretrial narrative statement was due and filed by defendants on August 30, 2005. No dispositive motion was filed by defendants on or before that date. After delays in the proceedings, defendants submitted a revised pretrial statement on September 17, 2008. No dispositive motion was filed by defendants on or before that date.

Defendants filed the present motion for leave to file a motion for summary judgment on January 7, 2009. Trial is scheduled to begin March 2, 2009. Granting defendants' motion for leave and considering a motion for summary judgment like that proposed by

defendants would cause further unnecessary postponement of the trial. This case has been pending since October 2004, and the date for trial has been postponed three times. Given the late nature of defendants' motion, and the significant delays already experienced in this case, the court will deny defendants' motion. This decision does not preclude defendants from raising the same or similar issues in a Rule 50 motion at trial. The court will consider argument on the issue of collateral estoppel. Defendants assert that plaintiff is precluded from alleging a constitutional battery against defendants based upon plaintiff's criminal conviction for assault in connection with the February 24, 2004 incident. A hearing will be held on the issue of collateral estoppel on Monday, March 2, 2009 at 9:30 a.m. immediately prior to the start of trial to determine if the court should decide that issue. Briefing on that issue is due by defendants on February 17, 2009, and a response by plaintiff will be due by February 24, 2009. Defendants shall make all necessary arrangements to have this order promptly served on plaintiff.

AND NOW this 10th day of February, 2009, upon consideration of defendants' motion for leave to file motion for summary judgment (Doc. No. 172), and plaintiff's objection (Doc. No. 179);

IT IS HEREBY ORDERED that defendants' motion for leave to file motion for summary judgment (Doc. No. 172) is DENIED without prejudice to defendants' right to raise the same issues in a Rule 50 motion at trial. The motion for summary judgment (Doc. No. 173) was filed without leave of court and is stricken from the record.

BY THE COURT:

/s/ Joy Flowers Conti  
Joy Flowers Conti  
United States District Judge